IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5365 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANTIBHAI ISHWARBHAI JADAV

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5365 of 2001

MS SEJAL K MANDAVIA for Petitioner No. 1

MR SAMIR DAVE, AGP, for Respondents No. 1-2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 12/02/2002

ORAL JUDGEMENT

Rule. Service of rule is waived by learned AGP Shri Samir Dave for the respondents. Looking to the facts of the case and in view of the request made by the

learned advocates, the petition is finally heard today.

2. The petitioner was appointed as a Jr. Clerk under the respondents on compassionate ground as father of the petitioner had expired when he was in service. The said appointment was conditional and the petitioner was supposed to pass pre-service training examination within the prescribed chances as per Condition No. 5 incorporated in the said order. The said examination had to be passed by the petitioner within three trials, but unfortunately the petitioner could not pass the said examination and, therefore, it is apprehended that service of the petitioner might be terminated. In the circumstances, the petitioner has approached this court.

3. Learned advocate Ms. Sejal Mandavia appearing for the petitioner has submitted that during the pendency of the petition, the petitioner's application for giving an additional grace chance for appearing at the pre-service training examination has been entertained by the respondent authorities and the petitioner is to be permitted to appear at the examination for the fourth time.

4. Learned AGP Shri Samir Dave appearing for the respondents has submitted that the petition is premature and as the petitioner has already been given an additional chance, the petition deserves to be rejected especially when the petitioner has been continued in service even though he has not passed the pre-service training examination within the prescribed chances.

5. I have heard the learned advocates. Upon perusal of the relevant record, it is not clear as to when the next examinations are to be held and even the learned advocates are not in a position to state as to when the petitioner will have to appear at the fourth chance. It is a fact that the petitioner's service has not been terminated till today as no order of termination has been passed and more particularly because this court has directed the respondents to maintain status-quo.

6. Looking to the facts of the case, in my opinion, ends of justice would be served if the petitioner is permitted to continue in service till result of his fourth trial is declared. Service of the petitioner shall be continued subject to result of the next examination when declared. It is clarified that if the petitioner does not appear at the said examination, service of the petitioner shall be terminated without waiting for the result of the examination.

7. In view of the above order, the petition is allowed. Rule is made absolute to the above extent with no order as to costs.

(A.R. Dave, J.)

(hn)